IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2391 OF 2004

1.The Bombay Mint Employees)
Federation Being No.BYT 8850,)
having registered office at)
Indian Government Mint, Mumbai)
Shaheed Bhagat Singh Marg,)
Bombay-23.)
2.The Bombay Mint Employees Federation)
through its General Secretary Shri)
J.Y. Rao, having its office address)
At Indian Government Mint, Mumbai,)
Shaheed Bhagat Singh Marg, Bombay-23.).....Petitioners

Versus

1. Union of India, Department of)
Economic Affairs, New Delhi)
2. General Manager, Indian Government)
Mint, Mumbai, Shaheed Bhagat Singh)
Marg, Mumbai-400 023.)
3. Ministry of Finance,)
Department of Economic Affairs,)
New Delhi,)
4. The Under Secretary, Dept. of)
Economic Affairs, New Delhi)..Respodnents

Mr. Ramrao Adik with Mr. A.D. Thorat for the petitioner

Mr. Rajiv Chavan with Mr. Sureshkumar for the respodnents

CORAM: F.I. REBELLO, J.

DATE :6th October, 2004

ORAL JDUGMENT:

. Rule. Heard forthwith. By the present petition the petitioners have firstly prayed to quash and set aside the Notice/order dated 15th March, 2004. By that notice the workmen have been informed that as per directions received from the Ministry of Finance all the employees of India Government Mint, Mumbai will work 48 hours per week (44 normal working hours) and 4 hours overtime at single rate from 1st April, 2004 until further orders.

2. The second relief which is sought is to issue proper order, direction in respect of grant of 19% compensation for the increased working hours from 37 1/2 hours per week to 44 hours per week as agreed in the settlement/conciliation arrived with Management/Respondent No.2 before Regional Labour Commissioner (Central) Mumbai on 5th May, 1998. In answer to the averments in the petition on behalf of the respondents an affidavit has been filed by Samuel T. Bing, Chief Administrative Officer of respondent No.2. Certain documents had been produced by him along with the said reply. A rejoinder has been filed on behalf of the petitioners.

3. With the above we may first consider the relief in terms of prayer clause (b). On 15th April, 1998 discussions were held betwen the Union/Association

representing the workmen and the respondents. In the discussion one of the conclusions arrived at is in clause 6, whcih reads as under:-

> 6. The workers/employees demanded 19% compensation on account of introduction of 44 hours normal weekly working hours as per 5th Pay Commission recommendations. This will be taken up with the Department of Expenditure for favourable consideration."

Thereafter procedings in conciliation were held before the Conciliation Officer on 5th May, 1998 pursuant to a strike notice dated 18th February, 1998. Both the Union and the Management agreed to implement all the seven items of records of the discussions held on 15th April, 1998 at New Delhi after complying with the relevant statutory provisions and other Rules and Regulations as early as possible. In a communication dated 8th February, 1999 addressed to the Assistant Labour Commissioner in so far as compensation for increased working hours it was intimated that the matter is pending with the Ministry of Finance and they would expedite the same. The Conciliation Officer had submitted a failure of conciliation report on 18th December, 2002 to the Central Government. On 21st January,2004 the Government of India, Ministry of Labour intimated to the General Secretary, Bombay Mint Employees Federation as also the Chief Administrative Officer, India Government Mint that the various disputes raised therein were not found fit by the

Government for adjudication. In respect of 19% compensation for the increased working hours it was rejected on the ground that the matter is pending before the Ministry of Finance and after receipt of the same they will expedite the same. The Ministry of Finance by their letter dated 23rd April, 2004 have intimated the General Manager , India Government Mint, Mumbai, that the proposal regarding grant of 19% compensation for increased working hours from 37 1/2 hours per week to 44 hours per week in 1998 when the working hours of 44 hours per week was first implemented had already been not agreed to. In other words the Finance Ministry has rejected the demand for 19% compensation.

. The position, therefore, would be that the reasons given by the Appropriate Government to reject the demand for reference by the letter of 28th January, 2004 would no longer survive. The matter is pending for some time. Considering the facts and circumstances Counsel for the parties agree that in so far as this demand is concerned the Approriate Government can be directed to make reference.

5. The next prayer (b) is in the matter of overtime. The relief sought for by the petitioner is to set aside the notice/order. For the petitioners to get such a relief they must show that they have a legal right in them, either based on a settlement, a statutory right or any other administrative instructions which have the force of law. In the instant case in the minutes of the

discussion recorded on 15th April, 1998 it was set out under clause 2 as undder:-

> "Keeping in view the demand - supply position of coins etc., the General Manager of each Mint will be authorised to sanction maximum overtime working with a view to increasing production according to work needs and in conformity with Factories Act i.e. approximately 54 hours per week. The demand supply gap as at present is likely to continue in foreseeable future. The OTA working will be only subject to review and revision after consultation with the Unions/associations."

In the minutes before the Conciliation Officer on 5th May, 1998 it was agreed between the Union and the Management wherein the management had made a statement that they had agreed to implement all the clauses of record of discussions held on 15th April, 1998 held at New Delhi after complying with the relevant statutory provisions of other Rules and Regulations as earlier as possible.

6. The Union had addressed a letter on 14th May, 2004 to the General Manager, India Government Mint, Mumbai wherein it was set out that they had learnt that a proposal had been submitted to the Department of Economic Affairs, Ministry of Finance, Government of India, New Delhi for stoppage of overtime and 44 hours per week duty for the Mint Emploeyes. The notice which is the subject matter of challenge sets out that the employees set out

therein will work 48 hours per week and 4 hours overtime at single rate from 1st April, 2004 until further orders.

. On behalf of the petitioners their learned Counsel contends that it was understood that the respondents would make available overtime considering the agreement before the Conciliation Officer pursuant to the minutes of discussion which were recorded at the meeting of 5th May, 1998. At the highest, therefore, their prayer for the relief can be based on the said discussion.

. The very concept for overtime was based on increase of production at the relevant time. In the affidavit of Samuel T. Bing it is pointed out that R.B.I. has reduced the requirement of coins and in the circmstances Mumbai Mint has no option but to change the overtime working hours. It is further set out that Mints produce coins as per requriement of RBI and each and every coin is to be given to RBI only. It is, therefore, clear that the production of coins is dependent on the demand by RBI and, therefore, Overtime will have to be granted considering that aspect in mind. Grant of overtime necessarily is within the province of the employer depending on the facts and circumstances. The learned Counsel for the petitioner, however, has drawn my attention to a judgment of a single Judge of the High Corut of judicature, Andhra Pradesh at Hyderabad in Writ Petition No.6117 of 2004. The very notice which is in issue before this Court was in issue before the learned Judge of the Andhra Pradesh High Court and therein the

Labour Commissioner informed the respondents that since the dispute is in conciliation, both the parties are requested to ensure that Section 33 of the I.D. Act is not violated during the pendency of conciliation. It is in these circumstances that before the Andhra Pradesh High Court it was submitted that as the matter was seized by the Conciliation Officer there cannot be any change of the service conditions and, therefore, the petitioners therein are entitled to work overtime without reference to the said notice as they have been continuously working. The learned Judge noted that the petitioners are willing to work without double payment and in these circumstances directed that status quo obtaining as on that day shall be maintained pending disposal of the conciliation proceedings and the Conciliation Officer shall complete the conciliation proceedings as expeditiously as possible.

. Considering that order the learned Counsel submits that the order of status quo in so far as the Bombay Mint is concerned should also be maintained. It is then pointed out that another matter is pending before the Calcutta High Court. From the material produced all that appears is that the maintainability of the petition before the Calcutta High Court was decided as preliminary issue and other issues are yet to be decided.

6. The question then really is whether it is open to this Court to grant any relief in the matter of Overtime. As pointed out earlier the minutes of discussion which are recorded and which the respondents had agreed to was based

on the need for overtime. The affidvit on behalf of the respodnents shows that there is lesser demand from the R.B.I. necessitating reduction in working hours in so far as Overtime is concerned. This would be within the Managerial and/or administrative directions of the respodnents. Overtime cannot be a matter of right unless as set out earlier there is some legal right confered by statute, standing orders or like. In the instant case atleast as of today it has not been possible for the petitioners to so establish. Neither is the matter in conciliation before the Conciliation Officer to direct the respondents not to alter the status quo as prevailing. Even otherwise if the Conciliation proceedings were pending by operation of law itself, the respondents could not have altered the said conditions.

7. In my opinion, therefore, it will not be possible to grant any relief in so far as Overtime is concerned. If the petitioners are still aggrieved it will be open to them to raise the dispute on the said demand and take the matter in conciliation. It is for the Conciliation Officer then to enter upon conciliation and submit failure report on which the Appropriate Government can take its decision. For the aforesaid reasons the following order:-

(i) Rule made partly absolute in as much as the demand for 19% compensation which was referred to under Item No.1 of the letter dated 29th January, 2004 of the Government of India, the Ministry of Labour is directed to make a reference in so far as the dispute covered by Item No.1

which reads as under:-

> "1.Grant of 19% compensation for the increased working hours from 37 1/2 hours per week to 44 hours per week as agreed in the settlement arrived with the management before Regional Labour Commissioner (Central), Mumbai."

to the Central Industrial Tribunal within a period of twelve weeks from today.

.(ii) Rule made partly absolute accordingly. There shall be no order as to costs.

.(iii) Learned Counsel for the petitioners seeks continuation of the interim order granted by this Court. Considering what has been discussed earlier it is not possible to continue the interim order. Hence oral application for continuation of the interim order rejected.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Associate/Personal Secretary of this Court.

(F.I.REBELLO, J.)